

# EXECUTIVE JOURNAL.

[THIRD SESSION.]

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*A Record of the Executive Proceedings of the Senate of the United States of America, assembled at Philadelphia, December the 6th, 1790.*

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FRIDAY, DECEMBER 17, 1790.

A written message from the President of the United States, by Mr. Lear, his Secretary, was delivered to the Vice-President, and he withdrew.

UNITED STATES, December 17th, 1790.

Gentlemen of the Senate:

Since your last session, I have appointed Robert Morris Judge of the District of New Jersey, in place of David Brearly deceased; and John Heth, of Virginia, an Ensign in the troops of the United States, in place of Richard Archer, who has declined his appointment.

As these appointments expire with your present session, I nominate Robert Morris to be Judge of the District of New Jersey, in place of David Brearly deceased; and John Heth, of Virginia, to be an Ensign in the troops of the United States, in place of Richard Archer, who has declined his appointment.

I likewise nominate John Sitgreaves to be Judge of the District of North Carolina, in place of John Stokes deceased; William Hill to be Attorney for the United States in the District of North Carolina, in place of John Sitgreaves, if his nomination as Judge meets your concurrence; Zachariah Rowland to be Surveyor of the port of Richmond, in the State of Virginia, in place of Corbin Braxton, who has resigned his appointment; and Jeremiah Nicols to be Collector of the port of Chester, in the State of Maryland, in place of John Scott deceased.

Go. WASHINGTON.

Ordered, That the message lie for consideration.

MONDAY, DECEMBER 20, 1790.

The Senate proceeded to consider the message from the President of the United States, of the 17th of December, 1790, and the nominations therein contained, of

Robert Morris to be Judge of the District of New Jersey, in place of David Brearly deceased.

John Heth, of Virginia, to be an Ensign in the troops of the United States, in place of Richard Archer, who has declined his appointment.

John Sitgreaves to be Judge of the District of North Carolina, in place of John Stokes deceased.

William Hill to be Attorney for the United States, in the District of North Carolina, in place of John Sitgreaves.

Zachariah Rowland to be Surveyor of the port of Richmond, in the State of Virginia, in place of Corbin Braxton, who has resigned his appointment, and

Jeremiah Nichols to be Collector of the port of Chester, in the State of Maryland, in place of John Scott, deceased: and,

*Resolved*, That the Senate advise and consent to the appointments respectively.

*Ordered*, That the Secretary lay this resolution before the President of the United States.

### THURSDAY, DECEMBER 23, 1790.

A written message from the President of the United States, by Mr. Lear, his Secretary, was delivered to the Vice-President, and he withdrew.

UNITED STATES, *December 23d, 1790.*

*Gentlemen of the Senate:*

I nominate Woodbury Langdon, of the State of New Hampshire, to be one of the Commissioners for settling the accounts between the United States and individual States, in place of John Taylor Gilman, who has resigned his appointment; and

William Gardner, to be Commissioner of Loans in the State of New Hampshire, in place of Nathaniel Gilman, who has declined his appointment.

Go. WASHINGTON.

*Ordered*, That this message lie for consideration.

### FRIDAY, DECEMBER 24, 1790.

The Senate proceeded to consider the message from the President of the United States, of the 23d of December, 1790, and the nominations therein contained, of Woodbury Langdon, of the State of New Hampshire, to be one of the Commissioners for settling the accounts between the United States and individual States, in place of John Taylor Gilman, who has resigned his appointment, and

William Gardner to be Commissioner of Loans in the State of New Hampshire, in place of Nathaniel Gilman, who has declined his appointment.

*Resolved*, That the Senate advise and consent to the appointments respectively.

*Ordered*, That the Secretary lay this resolution before the President of the United States.

### MONDAY, JANUARY 3, 1791.

A written message from the President of the United States, by Mr. Lear, his Secretary, was delivered to the Vice-President, and he withdrew.

UNITED STATES, *January 3d, 1791.*

*Gentlemen of the Senate:*

I nominate Abraham Ogden to be Attorney for the United States, in the District of New Jersey, in place of Richard Stockton, who has resigned.

Go. WASHINGTON.

*Ordered*, That this message lie for consideration.

TUESDAY, JANUARY 4, 1791.

The Senate proceeded to the consideration of the message from the President of the United States, and the nomination of Abraham Ogden to be Attorney for the United States, in the District of New Jersey, in place of Richard Stockton, who has resigned.

*Resolved*, That the Senate advise and consent to his appointment accordingly.

*Ordered*, That the Secretary lay this resolution before the President of the United States.

MONDAY, JANUARY 17, 1791.

A message from the President of the United States, by Mr. Lear, his Secretary, who communicated to the Senate a letter from his most Christian Majesty to the President and members of Congress; and he withdrew.

UNITED STATES, January 17th, 1791.

*Gentlemen of the Senate:*

I lay before you a letter from his most Christian Majesty, addressed to the President and members of Congress of the United States of America.  
Go. WASHINGTON.

The letter referred to in the message, is as follows:

*To our very dear friends and allies, the President and members of the general Congress of the United States of North America.*

VERY DEAR GREAT FRIENDS AND ALLIES:

We have received the letter by which you inform us of the new mark of confidence that you have shown to Mr. Jefferson, and which puts a period to his appointment of Minister Plenipotentiary at our Court.

The manner in which he conducted during his residence with us, has merited our esteem and entire approbation, and it is with pleasure that we now give him this testimony of it.

It is with the most sincere pleasure that we embrace this opportunity of renewing these assurances of regard and friendship, which we feel for the United States in general, and for each of them in particular; under their influence, we pray God that he will keep you, very dear friends and allies, under his holy and beneficent protection.

Done at Paris, this 11th September, 1790.

Your good friend and ally,

LOUIS.

MONTMORIN, [SEAL.]

*The United States of North America.*

*Ordered*, That the Secretary return this letter to the President of the United States.

WEDNESDAY, JANUARY 19, 1791.

A written message from the President of the United States, by Mr. Lear, his Secretary, was delivered to the Vice-President, and he withdrew.

UNITED STATES, January 19th, 1791.

Gentlemen of the Senate:

I lay before you a representation of the Chargé des Affaires of France, made by order of his Court, on the acts of Congress of the 20th of July, 1789 and 1790, imposing an extra tonnage on foreign vessels, not excepting those of that country; together with the report of the Secretary of State thereon: and I recommend the same to your consideration, that I may be enabled to give to it such answer as may best comport with the justice and the interests of the United States.

Go. WASHINGTON.

The papers referred to in the above message were read, as follows:

### DOCUMENTS.

The Secretary of State having received from the Chargé des Affaires of France, a note on the tonnage payable by French vessels in the ports of the United States, has had the same under his consideration, and thereupon makes the following report to the President of the United States:

The Chargé des Affaires of France, by a note of the 13th of December, represents, by order of his Court, that they consider so much of the acts of Congress of July 20, 1789 and 1790, as imposes an extraordinary tonnage on foreign vessels, without excepting those of France, to be in contravention of the fifth article of the treaty of amity and commerce between the two nations; that this would have authorized, on their part, a proportional modification in the favors granted to the American navigation; but that his sovereign had thought it more conformable to his principles of friendship and attachment to the United States, to order him to make representations thereon, and to ask in favor of French vessels, a modification of the acts which impose an extraordinary tonnage on foreign vessels.

The Secretary of State, in giving in this paper to the President of the United States, thinks it his duty to accompany it with the following observations:

The third and fourth articles of the treaty of amity and commerce between France and the United States, subject the vessels of each nation to pay, in the ports of the other, only such duties as are paid by the most favored nation; and give them, reciprocally, all the privileges and exemptions in navigation and commerce, which are given by either to the most favored nations. Had the contracting parties stopped here, they would have been free to raise or lower their tonnage, as they should find it expedient, only taking care to keep the other on the footing of the most favored nation. The question then is, whether the fifth article cited in the note, is any thing more than an application of the principle comprised in the third and fourth to a particular object, or whether it is an additional stipulation of something not so comprised?

I. That it is merely an application of a principle comprised in the preceding articles, is declared by the express words of the article, to wit: "*Dans l'exemption ci-dessus est nommément compris, &c.*" "*in the above exemption is particularly comprised* the imposition of 100 sols per ton established in France on foreign vessels." Here, then, is at once an express declaration, that the exemption from the duty of 100 sols, is *comprised* in the third and fourth articles; that is to say, it was one of the exemptions enjoyed by the most favored nations, and, as such, extended to us by those articles. If the exemption spoken of in this first member of the fifth article,

was comprised in the third and fourth articles, as is expressly declared, then the reservation by France out of that exemption (which makes the second member of the same article,) was also comprised, that is to say, if the whole was comprised, the part was comprised. And if this reservation of France in the second member, was comprised in the third and fourth articles, then the counter reservation by the United States (which constitutes the third and last member of the same article,) was also comprised: because, it is but a corresponding portion of a similar whole, on our part, which had been comprised by the same terms with theirs.

In short, the whole article relates to a particular duty of 100-sols, laid by some antecedent law of France on the vessels of foreign nations, relinquished as to the most favored, and consequently to us. It is not a new and additional stipulation, then, but a declared application of the stipulations comprised in the preceding articles, to a particular case, by way of greater caution.

The doctrine laid down generally in the third and fourth articles, and exemplified specially in the fifth, amounts to this: "The vessels of the most favored nations coming from foreign ports, are exempted from the duty of 100 sols; therefore, you are exempted from it by the third and fourth articles. The vessels of the most favored nations coming coastwise, pay that duty; therefore, you are to pay it by the third and fourth articles. We shall not think it unfriendly in you to lay a like duty on coasters, because it will be no more than we have done ourselves. You are free also to lay that or any other duty on vessels coming from foreign ports; provided they apply to all other nations, even the most favored. We are free to do the same, under the same restriction. Our exempting you from a duty which the most favored nations do not pay, does not exempt you from one which they do pay."

In this view, it is evident that the fifth article neither enlarges nor abridges the stipulations of the third and fourth. The effect of the treaty would have been precisely the same, had it been omitted altogether; consequently, it may be truly said, that the reservation by the United States in this article, is completely useless. And it may be added, with equal truth, that the equivalent reservation by France is completely useless, as well as her previous abandonment of the same duty; and, in short, the whole article. Each party then remains free to raise or lower its tonnage, provided the change operates on all nations, even the most favored.

Without undertaking to affirm, we may obviously conjecture that this article has been inserted on the part of the United States, from an overcaution to guard, *nommément, by name*, against a particular grievance, which they thought they could never be too well secured against; and that has happened which generally happens; doubts have been produced by the too great number of words used to prevent doubt.

II. The Court of France, however, understands this article as intended to introduce something to which the preceding articles had not reached; and not merely as an application of them to a particular case. Their opinion seems to be founded on the general rule in the construction of instruments, to leave no words merely useless, for which any rational meaning can be found. They say that the reservation by the United States, of a right to lay a duty equivalent to that of the 100 sols reserved by France, would have been completely useless, if they were left free by the preceding articles to lay a tonnage to any extent whatever; consequently, that the reservation of a part proves a relinquishment of the residue.

If some meaning, and such a one is to be given to the last member of the article, some meaning, and a similar one, must be given to the corresponding member. If the reservation by the United States of a right to lay an equivalent duty, implies a relinquishment of their right to lay any other, the reservation by France, of a right to continue the specified duty to which it is an equivalent, must imply a relinquishment of the right on her part to lay or continue any other. Equivalent reservations by both, must imply equivalent restrictions on both. The exact reciprocity stipulated in the preceding articles, and which pervades every part of the treaty, ensures a counter right to each party, for every right ceded to the other.

Let it be further considered, that the duty called *tonnage* in the United States, is in lieu of the duties for anchorage, for the support of buoys, beacons, and light houses, to guide the mariner into harbor and along the coast, which are provided and supported at the expense of the United States; and for fees to measurers, weighers, gaugers, &c. who are paid by the United States; for which articles, among many others, (light-house money excepted,) duties are paid by us in the ports of France under their specific names. That government has hitherto thought these duties consistent with the treaty; and consequently the same duties under a general instead of specific names, with us, must be equally consistent with it; it is not the name, but the thing which is essential. If we have renounced the right to lay any port duties, they must be understood to have equally renounced that of either laying new, or continuing the old. If we ought to refund the port duties received from their vessels since the date of the act of Congress, they should refund the port duties they have received from our vessels since the date of the treaty; for nothing short of this is the reciprocity of the treaty.

If this construction be adopted, then each party has for ever renounced the right of laying any duties on the vessels of the other coming from any foreign port, or more than 100 sols on those coming coastwise. Could this relinquishment be confined to the two contracting parties alone, the United States would be the gainers; for it is well known, that a much greater\* number of American than of French vessels are employed in the commerce between the two countries: but the exemption once conceded by the one nation to the other, becomes immediately the property of all others who are on the footing of the most favored nations. It is true that those others would be obliged to yield the same compensation, that is to say, to receive our vessels duty free. Whether we should gain or lose in the exchange of the measure with them, is not easy to say.

Another consequence of this construction will be, that the vessels of the most favored nations, paying no duties, will be on a better footing than those of natives which pay a moderate duty; consequently, either the duty on these also must be given up, or they will be supplanted by foreign vessels in our own ports.

The resource, then, of duty on vessels for the purposes either of revenue or regulation, will be for ever lost to both. It is hardly conceivable that either party looking forward to all these consequences, would see their interest in them.

\* By an official paper from the bureau of the balance of commerce of France, we find that of the ships which entered the ports of France from the United States, in the year 1789, only 13, amounting to 2,105 tons, were French, and 163, making 24,173 tons, were American.

III. But, if France persists in claiming this exemption, what is to be done? The claim, indeed, is couched in mild and friendly terms; but the idea leaks out, that a refusal would authorize them to modify proportionally the favors granted by the same article to our navigation. Perhaps they may do what we should feel much more severely; they may turn their eyes to the favors granted us by their arrets of December 29, 1787, and December 7, 1788, which hang on their will alone, unconnected with the treaty. Those arrets, among other advantages, admit our whale oils to the exclusion of that of all other foreigners. And this monopoly procures a vent for seven-twelfths of the produce of that fishery, which experience has taught us could find no other market. Near two-thirds of the produce of our cod fisheries too have lately found a free vent in the colonies of France.\* This indeed has been an irregularity growing out of the anarchy reigning in those colonies. Yet the demands of the colonists, even of the government party among them, (if an auxiliary disposition can be excited by some marks of friendship and distinction on our part,) may perhaps produce a constitutional concession to them to procure their provisions at the cheapest market; that is to say, at ours.

Considering the value of the interests we have at stake, and considering the smallness of difference between foreign and native tonnage, on French vessels alone, it might perhaps be thought adviseable to make the sacrifice asked; and especially if it can be so done as to give no title to other the most favored nations to claim it. If the act should put French vessels on the footing of those of natives, and declare it to be in consideration of the favors granted us by the arrets of December 29, 1787, and December 7, 1788, (and perhaps this would satisfy them,) no nation could then demand the same favor without offering an equivalent compensation. It might strengthen, too, the tenure by which those arrets are held, which must be precarious so long as they are gratuitous.

It is desirable, in many instances, to exchange mutual advantages by legislative acts rather than by treaty; because the former, though understood to be in consideration of each other, and therefore greatly respected, yet, when they become too inconvenient, can be dropped at the will of either party: whereas stipulations by treaty are for ever irrevocable but by joint consent, let a change of circumstances render them ever so burdensome.

On the whole, if it be the opinion that the first construction is to be insisted on as ours, in opposition to the second urged by the Court of France, and that no relaxation is to be admitted, an answer shall be given to that Court, defending that construction, and explaining, in as friendly terms as possible, the difficulties opposed to the exemption they claim:

2. If it be the opinion that it is advantageous for us to close with France in her interpretation of a reciprocal and perpetual exemption from tonnage, a repeal of so much of the tonnage law will be the answer.

\* Abstract of the produce of the fisheries exported from the United States, from August 20, 1789, to August 14, 1790, in which is omitted one quarter's exportations from Boston, Plymouth, Dighton, Penobscot, Frenchman's Bay, Machias, and New York, of which the returns are not received.

	<i>Cod Fishery.</i>	<i>Whale Fishery.</i>	<i>Both Fisheries.</i>
France, and the French West Indies,	\$ 586,167	\$ 131,906	\$ 718,073
The rest of the world,	307,097	101,306	408,403
Whole produce,	\$ 893,264	\$ 233,212	\$ 1,126,476

3. If it be thought better to waive rigorous and nice discussions of right, and to make the modification an act of friendship and of compensation for favors received, the passage of such a bill will then be the answer.

TH. JEFFERSON

January 18, 1791.

TRANSLATION.

*L. G. Otto to the Secretary of State.*

PHILADELPHIA, December 13, 1790.

SIR: During the long stay you made in France, you had opportunities of being satisfied of the favorable dispositions of his Majesty to render permanent the ties that united the two nations, and to give stability to the treaties of alliance and of commerce, which form the basis of this Union. These treaties were so well maintained by the Congress formed under the ancient confederation, that they thought it their duty to interpose their authority whenever any laws made by individual States appeared to infringe their stipulations, and particularly in 1785, when the States of New Hampshire and of Massachusetts had imposed an extraordinary tonnage on foreign vessels, without exempting those of the French nation. The reflections that I have the honor to address to you in the subjoined note, being founded on the same principles; I flatter myself that they will merit, on the part of the government of the United States, the most serious attention.

I am, with respect, &c.

L. G. OTTO.

TRANSLATION.

*L. G. Otto to the Secretary of State.*

NOTE.—The underwritten Chargé des Affaires of France has received the express order of his Court to represent to the United States, that the act passed by Congress, the 20th July, 1789, and renewed the 20th July of the present year, which imposes an extraordinary tonnage on foreign vessels, without excepting French vessels, is directly contrary to the spirit and to the object of the treaty of commerce which unites the two nations, and of which his Majesty has not only scrupulously observed the tenor, but of which he has extended the advantages by many regulations very favorable to the commerce and navigation of the United States.

By the 5th article of this treaty, the citizens of these States are declared exempt from the tonnage duty imposed in France on foreign vessels; and they are not subject to that duty but in the coasting business. Congress has reserved the privilege of establishing *a duty equivalent to this last*, a stipulation founded on the state in which matters were in America at the time of the signature of the treaty. There did not exist, at that epoch, any duty on tonnage in the United States.

It is evident that it was the non-existence of this duty, and the motive of a perfect reciprocity stipulated in the preamble of the treaty, that had determined the king to grant the exemption contained in the article fifth; and a proof that Congress had no intention to contravene this reciprocity, is, that *it only reserves a privilege of establishing on the coasting business, a duty equivalent to that which is levied in France.* This reservation would have been completely useless, if by the words of the treaty, Con-

gress thought themselves at liberty to lay *any* tonnage they should think proper on French vessels.

The undersigned has the honor to observe, that this contravention of the fifth article of the treaty of commerce, might have authorized his majesty to modify proportionably the favors granted by the same article to the American navigation; but the king, always faithful to the principles of friendship and attachment to the United States, and desirous of strengthening more and more the ties which subsist so happily between the French nation and these States, thinks it more conformable to these views to order the undersigned to make representations on this subject, and to ask in favor of French vessels, a modification of the act which imposes an extraordinary tonnage on foreign vessels. His majesty does not doubt but that the United States will acknowledge the justice of this claim, and will be disposed to restore things to the footing on which they were at the signature of the treaty of the 6th February, 1778.

L. G. OTTO.

*Philadelphia, December 13, 1790.*

#### TRANSLATION.

*L. G. Otto to the Secretary of State.*

*New York, January 8, 1791.*

SIR: I have the honor herewith to send you a letter from the king to Congress, and one which M. de Montmorin has written to yourself. You will find therein the sincere sentiments with which you have inspired our government, and the regret of the Minister in not having a more near relation of correspondence with you. In these, every person who has had the advantage of knowing you in France, participates.

At the same time, it gives me pain, Sir, to be obliged to announce to you that the complaints of our merchants on the subject of the tonnage duty increase, and that they have excited not only the attention of the king, but that of several departments of the kingdom. I have received new orders, to request of the United States a decision on this matter, and to solicit, in favor of the aggrieved merchants, the restitution of the duties which have already been paid. I earnestly beg of you, Sir, not to lose sight of an object, which, as I have already had the honor to tell you verbally, is of the greatest importance for cementing the future commercial connexions between the two nations.

In more particularly examining this question, you will perhaps find that motives of convenience are as powerful as those of justice, to engage the United States to give to his majesty the satisfaction which he requires. At least twice as many American vessels enter the ports of France, as do those of France the ports of America. The exemption of the tonnage duty, then, is evidently less advantageous for the French, than for the navigators of the United States. Be this as it may, I can assure you, Sir, that the delay of a decision in this respect, by augmenting the just complaints of the French merchants, will only augment the difficulties. I therefore beg of you, to enable me before the sailing of the packet, which will take place towards the last of this month, to give to my Court a satisfactory answer.

I have the honor to be, &c.

L. G. OTTO.

His Excellency M. JEFFERSON, *Secretary of State.*

*Ordered*, That this message and papers be committed to Messrs. Morris, King, Izard, Strong, and Ellsworth, to consider and report what is proper to be done thereon.

THURSDAY, JANUARY 27, 1791.

Mr. Morris reported from the Committee, appointed to take into consideration the message of the President of the United States, of the 19th instant.

*Ordered*, That the report lie for consideration.

FRIDAY, JANUARY 28, 1791.

The Senate took into consideration the report of the Committee, made yesterday, on the message of the President of the United States, of the 19th instant, and after debate the farther consideration thereof was postponed.

MONDAY, JANUARY 31, 1791.

The Senate resumed the consideration of the report of the Committee, made the 27th instant, and after debate it was farther postponed.

TUESDAY, FEBRUARY 1, 1791.

Mr. Langdon reported from the Committee, appointed as per Legislative Journal, December 15th, 1790, on that part of the speech of the President of the United States, which relates to the commerce of the Mediterranean, together with his message recorded, also on the Legislative Journal of the 30th of December, 1790, and on the letter of the 20th of January, from the Secretary of State, respecting the American prisoners in captivity at Algiers, with the papers accompanying the same; and the report is, that it be

1   *Resolved*, That the Senate  
2 advise and consent that the  
3 President of the United  
4 States take such measures  
5 as he may think necessa-  
6 ry for the redemption of  
7 the citizens of the Unit-  
8 ed States now in captivity at  
9 Algiers, provided the expense

10 shall not exceed forty thousand  
11 dollars; and also, that measures  
12 be taken to confirm the treaty  
13 now existing between the U. S.  
14 and the Emperor of Morocco,  
15 provided no greater sum than  
16 twenty thousand dollars be  
17 expended in that business.

On motion to postpone the first clause of the report, to wit: from "Resolved," line 1st, to "that," line 11th, it passed in the negative.

And on motion to expunge from the second clause of the report, these words, lines 15, 16 and 17, "provided no greater sum than twenty thousand dollars be expended in that business;" it passed in the affirmative. And the report, as amended, was agreed to. Whereupon,

*Resolved*, That the Senate advise and consent that the President of the United States take such measures as he may think necessary for the redemption of the citizens of the United States now in captivity at Algiers, provided the expense shall not exceed forty thousand dollars; and also, that measures be taken to confirm the treaty now existing between the United States and the Emperor of Morocco.

*Ordered*, That the Secretary communicate this resolution to the President of the United States.

Mr. Langdon, from the Committee, appointed the 15th of December, 1790, as recorded on the Legislative Journal of that date, reported January the 6th, 1791, on the same subject:

"That the trade of the United States to the Mediterranean cannot be protected but by a naval force, and that it will be proper to resort to the same, as soon as the state of the public finances will admit."

On motion,

*Ordered*, That this report be re-committed, with an instruction to the Committee to consider the subject, and report generally thereon. See Legislative Journal of the 6th and 20th January, for farther instructions to this Committee.

### WEDNESDAY, FEBRUARY 2, 1791.

A letter from the Secretary of State enclosing an extract of one from William Short, Chargé des Affairs at the Court of France, was read.

*Ordered*, That the letter and enclosure lie for consideration.

### MONDAY, FEBRUARY 14, 1791.

A written message from the President of the United States, by Mr. Lear, his Secretary, was delivered to the Vice-President, and he withdrew.

UNITED STATES, *February 14th, 1791.*

*Gentlemen of the Senate:*

Conceiving that in the possible event of a refusal of justice on the part of Great Britain, we should stand less committed should it be made to a private rather than to a public person, I employed Mr. Gouverneur Morris, who was on the spot, and without giving him any definite character, to enter informally into the conferences before mentioned. For your more particular information, I lay before you the instructions I gave him, and those parts of his communications wherein the British Ministers appear either in conversation or by letter. These are two letters from the Duke of Leeds to Mr. Morris, and three letters of Mr. Morris, giving an account of two conferences with the Duke of Leeds, and one with him and Mr. Pitt. The sum of these is, that they declare, without scruple, they do not mean to fulfil what remains of the Treaty of Peace to be fulfilled on their part (by which we are to understand the delivery of the posts and payment for property carried off) till performance on our part, and compensation where the delay has rendered the performance now impracticable: that on the subject of a treaty of commerce they avoided direct answers, so as to satisfy Mr. Morris they did not mean to enter into one unless it could be extended to a treaty of alliance, offensive and defensive, or unless in the event of a rupture with Spain.

As to the sending a minister here, they made excuses at the first conference, seem disposed to it in the second, and in the last express an intention of so doing.

Their views being thus sufficiently ascertained, I have directed Mr. Morris to discontinue his communications with them.

Go. WASHINGTON.

*Ordered*, That this message lie for consideration.

FRIDAY, FEBRUARY 18, 1791.

A written message from the President of the United States, by Mr. Lear, his Secretary, was delivered to the Vice-President, and he withdrew.

UNITED STATES, February 18th, 1791.

Gentlemen of the Senate:

The aspect of affairs in Europe during the last summer, and especially between Spain and England, gave reason to expect a favorable occasion for pressing to accommodation the unsettled matters between them and us. Mr. Carmichael, our Chargé des Affaires at Madrid, having been long absent from his country, great changes having taken place in our circumstances and sentiments during that interval, it was thought expedient to send some person in a private character, fully acquainted with the present state of things here, to be the bearer of written and confidential instructions to him, and at the same time to possess him in full and frequent conversations, of all those details of facts, and topics of argument, which could not be conveyed in writing; but which would be necessary to enable him to meet the reasonings of that Court with advantage. Colonel David Humphreys was therefore sent for these purposes.

An additional motive for this confidential mission, arose in the same quarter. The court of Lisbon had, on several occasions, made the most amicable advances for cultivating friendship and intercourse with the United States. The exchange of a diplomatic character had been informally, but repeatedly suggested on their part. It was our interest to meet this nation in its friendly dispositions, and to concur in the exchange proposed. But my wish was, at the same time, that the character to be exchanged should be of the lowest and most economical grade. To this it was known that certain rules, of long standing at that court, would produce obstacles. Colonel Humphreys was charged with despatches to the Prime Minister of Portugal, and with instructions to endeavor to arrange this to our views. It happened, however, that previous to his arrival at Lisbon, the Queen had appointed a Minister *resident* to the United States. This embarrassment seems to have rendered the difficulty completely insurmountable. The Minister of that court, in his conferences with Colonel Humphreys, professing every wish to accommodate, yet expresses his regrets that circumstances do not permit them to concur in the grade of Chargé des Affaires, a grade of little privilege or respectability by the rules of their court, and held in so low estimation with them, that no proper character would accept it, to go abroad. In a letter to the Secretary of State he expresses the same sentiments, and announces the appointment, on their part, of a Minister *resident* to the United States, and the pleasure with which the Queen will receive one from us at her court. A copy of his letter and also of Colonel Humphreys, giving the details of this transaction, will be delivered to you.

On consideration of all circumstances, I have determined to accede to the desire of the court of Lisbon, in the article of grade. I am aware that the consequences will not end here, and that this is not the only instance in which a like change may be pressed. But should it be necessary to yield elsewhere also, I shall think it a less evil than to disgust a government so friendly and so interesting to us as that of Portugal.

I do not mean that the change of grade shall render the mission more expensive.

I have therefore nominated David Humphreys, Minister resident from the United States to her most faithful Majesty the Queen of Portugal.

Go. WASHINGTON.

*Ordered*, That this message lie for consideration.

MONDAY, FEBRUARY 21, 1791.

The Senate proceeded to the consideration of the message from the President of the United States, of the 18th instant, and the nomination therein contained, of David Humphreys, to be Minister resident from the United States to her most faithful Majesty the Queen of Portugal; and

*Resolved*, That the Senate advise and consent to his appointment accordingly.

*Ordered*, That the Secretary communicate this resolution of Senate to the President of the United States.

TUESDAY, FEBRUARY 22, 1791.

A written message from the President of the United States, by Mr. Lear, his Secretary, was delivered to the Vice-President, and he withdrew.

UNITED STATES, *February 22d, 1791.*

*Gentlemen of the Senate:*

I will proceed to take measures for the ransom of our citizens in captivity at Algiers; in conformity with your resolution of advice of the first instant, so soon as the moneys necessary shall be appropriated by the Legislature, and shall be in readiness.

The recognition of our treaty with the new Emperor of Morocco requires also previous appropriation and provision. The importance of this last to the liberty and property of our citizens, induces me to urge it on your earliest attention.

Go. WASHINGTON.

*Ordered*, That the message be committed to the Committee appointed the 15th of December, 1790, to consider and report on that part of the President's message relating to the commerce of the Mediterranean.

A written message from the President of the United States, by Mr. Lear, his Secretary, was delivered to the Vice-President, and he withdrew.

UNITED STATES, *February 22d, 1791.*

*Gentlemen of the Senate:*

I lay before you a report of the Secretary of War, relative to the appointment of two Brigadier Generals of militia in the Territory of the United States south of the Ohio; and I nominate John Sevier to be Brigadier General of the militia of Washington district; and James Robertson to be Brigadier General of the militia of Miro district, both within the said Territory.

Go. WASHINGTON.

*Ordered*, That this message lie for consideration.

WEDNESDAY, FEBRUARY 23, 1791.

The Senate proceeded to the consideration of the message from the President of the United States, of the 22d instant, and the nominations therein

contained, of John Sevier, to be Brigadier General of the militia of Washington district, and James Robertson to be Brigadier General of the militia of Miro district, both within the Territory of the United States south of the Ohio; and

*Resolved*, That they do advise and consent to the appointments therein mentioned, respectively.

*Ordered*, That the Secretary communicate this resolution of Senate to the President of the United States.

A written message from the President of the United States, by Mr. Lear, his Secretary, was delivered to the Vice-President, and he withdrew.

UNITED STATES, February 23d, 1791.

*Gentlemen of the Senate:*

Information having been received from Thomas Auldjo, who was appointed Vice-Consul of the United States at Cowes, in Great Britain, that his commission has not been recognised by that government, because it is a port at which no foreign Consul has yet been received, and that it has been intimated to him that his appointment to the port of Poole, and parts nearer to that than to the residence of any other Consul of the United States, would be recognised, and his residence at Cowes not noticed; I have therefore thought it expedient to nominate Thomas Auldjo, to be Vice-Consul for the United States at the port of Poole, in Great Britain, and such parts within the allegiance of his Britannic Majesty as shall be nearer thereto than to the residence of any other Consul or Vice-Consul of the United States within the same allegiance.

I also nominate James Yard, of Pennsylvania, to be Consul for the United States in the island of Santa Cruz, and such other parts within the allegiance of His Danish Majesty as shall be nearer thereto than to the residence of any other Consul or Vice-Consul of the United States within the same allegiance.

Go. WASHINGTON.

*Ordered*, That this message lie for consideration.

THURSDAY, FEBRUARY 24, 1791.

The Senate proceeded to the consideration of the message from the President of the United States, of the 23d instant, and the nominations therein contained, of Thomas Auldjo, to be Vice-Consul for the United States at the port of Poole, in Great Britain, and such parts within the allegiance of his Britannic Majesty as shall be nearer thereto than to the residence of any other Consul or Vice-Consul of the United States within the same allegiance; and James Yard, of Pennsylvania, to be Consul for the United States in the island of Santa Cruz, and such other parts within the allegiance of his Danish Majesty as shall be nearer thereto than to the residence of any other Consul or Vice-Consul of the United States within the same allegiance; and

*Resolved*, That they do advise and consent to the appointments therein mentioned, respectively.

*Ordered*, That the Secretary communicate this resolution of the Senate to the President of the United States.

FRIDAY, FEBRUARY 25, 1791.

A written message from the President of the United States, by Mr. Lear, his Secretary, was delivered to the Vice-President, and he withdrew.

UNITED STATES, *February 25th, 1791.*

*Gentlemen of the Senate:*

I nominate Joseph Anderson, of the State of Delaware, to be one of the Judges in the Territory of the United States south of the Ohio, in place of William Peery, who has declined his appointment; and

William Murry, of Kentucky, to be Attorney for the United States, in the district of Kentucky, in the place of James Brown, who has declined his appointment.

Go. WASHINGTON.

*Ordered,* That this message lie for consideration.

SATURDAY, FEBRUARY 26, 1791.

The Senate proceeded to the consideration of the message from the President of the United States, of the 25th instant, and the nominations therein contained of Joseph Anderson, of the State of Delaware, to be one of the Judges in the Territory of the United States south of the Ohio, in place of William Peery, who has declined his appointment; and

William Murry, of Kentucky, to be Attorney for the United States, in the District of Kentucky, in place of James Brown, who has declined his appointment; and

*Resolved,* That they do advise and consent to the appointments therein mentioned, respectively.

*Ordered,* That the Secretary communicate this resolution of Senate to the President of the United States.

The report of the Committee to whom was referred the message from the President of the United States, of the 19th instant, with the note of the Chargé des Affaires of France, of the 13th of December, was taken into consideration; and, being amended, was agreed to. Whereupon,

*Resolved,* As the opinion of the Senate, that the 5th article of the treaty of amity and commerce between the United States and His Most Christian Majesty, is merely an illustration of the third and fourth articles of the same treaty, by an application of the principles comprised in the last mentioned articles, to the case stated in the former.

*Resolved,* That the Senate do advise that an answer be given to the Court of France, defending, in the most friendly manner, this construction in opposition to that urged by the said Court.

*Ordered,* That the Secretary communicate these resolutions to the President of the United States.

TUESDAY, MARCH 1, 1791.

Mr. Langdon reported from the Committee to whom was referred the message of the President of the United States, of the 22d of February last.

*Ordered,* That the report lie until to-morrow for consideration.

THURSDAY, MARCH 3, 1791.

The Vice-President notified the Senate that it was the request of the President of the United States, that they would assemble on the 4th day of March, instant, to transact some public business of importance.

The Senate took into consideration the report of the Committee on the message of the President of the United States, of the 22d of February.

Whereupon, it was resolved as follows:

Whereas, since the resolution of the Senate advising the President of the United States to take measures for the ransom of the American captives at Algiers, large appropriations of money have been made for the protection of the Western frontiers;

*Resolved*, That the Senate do advise and consent that the President of the United States suspend any operations under the said resolution, for the ransom of the said captives, until the situation of the treasury shall more clearly authorize appropriations of money for that purpose.

*Ordered*, That the Secretary communicate this resolution to the President of the United States.

A written message from the President of the United States, with sundry military nominations annexed, was communicated to the Senate by Mr. Lear, his Secretary, and he withdrew.

UNITED STATES, 3d March, 1791.

Gentlemen of the Senate:

Certain vacancies having taken place in the officers of the troops established by an act passed on the 30th of April, 1790, I nominate to fill those vacancies the persons whose names are in the annexed list, under the head of the first regiment. I likewise nominate the persons to fill the offices affixed to their names in the annexed list, under the head of the second regiment, agreeably to a law passed this day.

Go. WASHINGTON.

*Ordered*, That the message and nominations lie for consideration.

Attest:

SAM: A. OTIS, *Secretary*.

END OF THE THIRD SESSION.